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No. 08-516

Supreme Court, U.S.
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In The

Supreme Court of the United States

CITY OF SARALAND, ALABAMA,
and FRANK MANN,

Petitioners,

v.

MICHAEL PARDUE,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

Respondent's Brief in Opposition does not clearly address the issues presented in the Petition. More specifically, Respondent's arguments fail to adequately address the significant conflicts outlined by the Petitioners which require the attention of this Court. A grant of *certiorari* in this case is necessary to determine the existence, *vel non*, of a § 1983 malicious prosecution claim and to clarify the proper basis for the accrual of any such claim.

I. Respondent's Brief in Opposition Fails to Squarely Address the Questions Presented

Respondent's Brief in Opposition to the Petition seems to miss the point. Respondent essentially concedes the inconsistency among the lower courts regarding the definition of a § 1983 malicious prosecution claim and then seems to try and recast the claim in another light. Respondent argues that the question of whether there exists a § 1983 malicious prosecution claim does not warrant review; however, the specific issue presented is the proper determination of the accrual of the § 1983 claims alleged in this case and the question about the existence of a § 1983 malicious prosecution claim is integrally related to that underlying issue.

Although Respondent is responsible for initially defining his Fourth Amendment claim as a § 1983 malicious prosecution claim, he now attempts to redefine that claim on appeal. Despite alleging a

§ 1983 malicious prosecution claim in the complaint, Respondent now asserts in his Brief in Opposition that "his Fourth Amendment rights were violated when he was seized incident to Petitioners' institution and pursuit of baseless criminal charges against him." (Brief in Opposition, p. 7). With that vague assertion as a starting point, Respondent then argues that it should not matter how he characterizes the claim since the courts allow § 1983 claims based on an unlawful seizure without probable cause. (Brief in Opposition, pp. 9-14). Petitioner does not dispute the general assertion that an unlawful seizure without probable cause may support a § 1983 claim. Nevertheless, that general assertion is entirely unhelpful as to the analysis of the § 1983 claims in this case.

A § 1983 claim based on an unlawful seizure is typically analyzed as a false arrest or false imprisonment claim and this Court has already addressed the accrual of those claims. *Wallace v. Kato*, 549 U.S. 384 (2007). The unresolved question presented in this case is whether a § 1983 malicious prosecution claim, based on conduct allegedly occurring after the point of seizure, can be grounded in the Fourth Amendment and, if so, when does such a claim accrue for the purpose of computing the statute of limitation. The determination of the first question is necessary for finding the answer to the second.

It is interesting that Respondent appears to redefine his Fourth Amendment claim at this stage as a "seizure incident to Petitioners' institution and pursuit of baseless criminal charges against him."

(Brief in Opposition, p. 7). If the § 1983 claims are simply based on an allegedly unlawful seizure, those claims would be more akin to a false arrest claim and would be barred by the statute of limitation analysis set out in *Wallace v. Kato,* 549 U.S. 384 (2007). If, on the other hand, Respondent is still asserting a § 1983 malicious prosecution claim, the question goes back to determining the proper time for the accrual of such a claim.

It is curious that Respondent now seeks to focus on the seizure aspect of this case even though most of his complaint revolves around the alleged acts or omissions that occurred after his arrival at the Saraland Police Station. This shift by the Respondent is also interesting in light of the fact that the "continuing seizure" theory regarding § 1983 malicious prosecution claims has not gained much traction as a basis for extending the protections of the Fourth Amendment beyond the point someone is bound over by legal process. *Castellano v. Fragozo,* 352 F.3d 939, 959 (5th Cir. 2003); *Riley v. Dorton,* 115 F.3d 1159, 1163 (4th Cir. 1997); *Nieves v. McSweeney,* 241 F.3d 46, 55-57 (1st Cir. 2001).

In accordance with *Heck v. Humphrey*, 512 U.S. 477 (1994), to determine when a § 1983 malicious prosecution claim accrues, a court must first decide whether the particular claims alleged are the type that would necessarily imply the invalidity of the underlying criminal conviction. If the factual allegations support a claim that would imply the invalidity of the conviction, the deferred accrual rule in *Heck*

applies and the Court then must determine whether the underlying conviction has been invalidated. If the conviction has been invalidated, the Court then looks to see when that occurred to determine if the statute of limitation has run.

Focusing on the seizure aspect of this case, Respondent sets out a recitation of facts in the Brief in Opposition that attempts to paint a picture of egregious abuse. Obviously, Petitioners dispute those allegations.[1] The disputed facts are not important because the relevant undisputed facts support Petitioners' position that the claims are barred by the statute of limitation if the appropriate standards are applied.

The relevant facts in this case regarding the proper determination of the accrual of the § 1983 claims are set out in the Petition. Those facts show that Respondent's convictions were invalidated by direct reversal on appeal on September 2, 1994 for the Baldwin County conviction and on August 23, 1996 for the Mobile County conviction. Respondent did not file this lawsuit until June 25, 1999. Since any claims implying the invalidity of his convictions

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[1] Although Respondent relies on the allegations in the complaint to suggest that a confession was coerced after seventy-eight hours of abuse, Respondent's own subsequent deposition testimony contradicts those allegations when he admits to confessing to the murders within ten minutes to one hour of his initial interrogation. (Doc. 243, Folder 6, Ex. 11, Pardue Depo. pp. 106-113; Doc. 269, Pardue Depo. pp. 525-526).

accrued on September 2, 1994 and August 23, 1996, the two-year statute of limitation expired prior to the initiation of this lawsuit by Respondent in 1999.

Respondent also reads Petitioners' argument regarding the accrual issue too narrowly. The Petition outlines how the Eleventh Circuit essentially ignores the direction of *Heck v. Humphrey,* 512 U.S. 477 (1994) when it applies the state law rule for the accrual of a malicious prosecution claim to a similarly described § 1983 claim. The confusion over this accrual issue arises from the underlying confusion in the lower courts regarding the proper definition and analysis of these § 1983 malicious prosecution type claims.

Respondent misses the mark by arguing only against the position that the issuance of a *writ of habeas corpus* was the trigger for the accrual of these § 1983 claims. While the District Court discussed the issuance of the *writ of habeas corpus* as a trigger for the accrual of these claims in its order granting summary judgment, Petitioners also point out that Respondent's § 1983 claims accrued, at the latest, when his convictions were overturned on appeal. At that point, the convictions were invalidated in consonance with the language of *Heck* and any § 1983 claim implying the invalidity of those convictions could proceed. Since Respondent waited more than two years from the date of the reversal of those convictions to file suit, his claims are barred by the two-year statute of limitation. See, *Davis v. Zain,* 79 F.3d 18 (5th Cir. 1996) (Court determined that § 1983

claims accrued on reversal of criminal conviction on direct appeal despite pending retrial of criminal case).

Incredibly, Respondent argues that this case does not present an issue for review by this Court and then goes on to assert that the holding in *Heck* does not address the question presented in this case. Discussing that issue, Respondent specifically states:

> The Court undertook to answer only the threshold question whether the relevant conviction *must* have been invalidated prior to the filing of suit, not whether a certain event did in fact invalidate that conviction at some time in the past. This Court also had no occasion in *Heck* to articulate the exact kind of official action that would be sufficient to invalidate a conviction for the purpose of causing the accrual of a § 1983 malicious prosecution claim. (Brief in Opposition, p. 15).

This argument by Respondent is confusing. On the one hand, Respondent argues that the accrual issue in the present case is not appropriate for review by this Court; yet, on the other hand, Respondent argues in the same breath that this Court's decision in *Heck* fails to specifically answer the accrual question presented in this case. Respondent cannot have it both ways.

Curiously, Respondent also states that "[t]here is also no basis for petitioners' suggestion (Pet. 20-21) that the Eleventh Circuit's ruling conflicts with

Wallace v. Kato, 549 U.S. 384 (2007)." (Brief in Opposition, p. 17). Once again, Respondent misapprehends Petitioners' position. A review of pages 20 and 21 of the Petition for Writ of Certiorari cited by Respondent for the above proposition reveals no such suggestion. The issue is whether the decision of the Eleventh Circuit in this case regarding the accrual of these § 1983 claims is inconsistent with this Court's holding in *Heck.* As part of the analysis of this Court's decision in *Heck*, Petitioner also cites to the more recent decision in *Wallace v. Kato* for support. Even though the § 1983 claim in *Wallace* was a Fourth Amendment false arrest claim, the logic and analysis of the accrual issue in that case is instructive when analyzing the accrual issue in the present case. However, a determination of the accrual issue in this case is not entirely dependent on the holding in *Wallace v. Kato* since it should be beyond cavil that any claims in the present case similar to those alleged in *Wallace* would be barred by the statute of limitation. It is only those claims that would necessarily imply the invalidity of Respondent's convictions that would be subject to the delayed accrual rule in *Heck.* Because the Eleventh Circuit failed to follow the holding in *Heck* and applied an inconsistent state law rule for the accrual of these claims, Petitioner seeks review in this Court.

Apparently taking the position that the Eleventh Circuit's decision in this case is consistent with federal law, Respondent refers to another Eleventh Circuit opinion and states "[i]ndeed, the Eleventh Circuit has previously ruled, in a case not mentioned

by Petitioners, that 'a Fourth Amendment malicious prosecution claim under § 1983 remains a federal constitutional claim, and its elements and whether they are met ultimately are controlled by federal law.'" (Brief in Opposition, p. 17). The case Respondent refers to for that proposition is *Wood v. Kesler*, 323 F.3d 872 (11th Cir. 2003).

Respondent's reference to *Wood v. Kesler* is flawed in two ways. First, Petitioners did in fact mention *Wood v. Kesler* at pages 9 and 14 of the Petition. In fact, Petitioner cited *Wood v. Kesler* specifically to show that the Eleventh Circuit has adopted the state law elements for the common law tort of malicious prosecution and to outline how that holding has created this confusion regarding the proper determination of the accrual of these § 1983 claims. The second important issue highlighted by Respondent's misstatement above is the actual conflict between decisions of the Eleventh Circuit on this issue and this Court's holding in *Heck*. The adoption by the Eleventh Circuit of the state law "favorable termination" requirement for the accrual of § 1983 malicious prosecution claims is not a proper application of federal law. In addition, the Eleventh Circuit is not the final arbiter of the federal law applicable to these § 1983 claims. In other words, the Eleventh Circuit cannot adopt a state law requirement or element into a § 1983 cause of action if that decision is in direct conflict with a decision from this Court.

II. The Issues in this Case are Ripe for Review

In *Heck*, this Court specifically provided four possible triggers for the accrual of § 1983 claims such as those alleged by Respondent. If a § 1983 claim is not of the type that would necessarily imply the invalidity of the underlying conviction, the deferred accrual rule in *Heck* is not applicable and the limitation period begins to run. On the other hand, if the claim is one that would necessarily imply the invalidity of the underlying conviction, the claim does not accrue until that conviction is invalidated. *Heck v. Humphrey*, 512 U.S. at 486-487. In that event, the Court then looks to see whether "**[t]he conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a *writ of habeas corpus*, 28 U.S.C. § 2254**." *Heck v. Humphrey*, 512 U.S. at 486-487 (footnote omitted) (emphasis added).

Contrary to the holding in *Heck*, the Eleventh Circuit determined in the present case that Respondent's § 1983 claims accrued only after the criminal charges were *nolle prossed*. The Court reaches this erroneous conclusion in direct contravention of the holding in *Heck*. The determination by the Eleventh Circuit that the entry of *nolle prosequi* is the proper date for the accrual of these claims is an adoption of the state law rule for the accrual of malicious prosecution claims and this state law rule of accrual

is inconsistent with the federal rule announced in *Heck*.

The issues outlined in the Petition are ripe for review by this Court. Lower courts continue to struggle with the very existence and the definition of these § 1983 malicious prosecution claims and it is this confusion that further confounds the analysis of the accrual issue. Because the accrual analysis and the definition of the elements of these § 1983 claims are so intertwined, this case presents a perfect vehicle to provide needed clarity to the lower courts on these important issues. It is not just the parties in this case, but all § 1983 litigants who will benefit from a decision by this Court in this case.

More specifically, by granting the Petition, this Court can definitively address whether or not a cause of action for malicious prosecution brought pursuant to § 1983 exists under federal law. If so, this Court can then resolve the confusion among the lower courts as to the elements of such a cause of action. Finally, this Court can determine whether the accrual of such a cause of action occurs upon reversal of a conviction or, as sanctioned by the Eleventh Circuit, pursuant to state law upon the subsequent entry of *nolle prosequi*.

CONCLUSION

The Petition for Certiorari should be granted.

Respectfully submitted,

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